

Critical Habitat. These actions are taken under the authority of the Endangered Species Act of 1973, as amended. The plant is an annual grass of very limited distribution on Mokoli'i island, off the northeast shore of Oahu. Vandalism, including the possibility of fire and trampling; and recent planting of coconut trees in the area in which it grows are the greatest threats to its survival.

DATES: Comments from the public on this proposal must be received by April 30, 1981. Comments from the Governor of Hawaii must be received by April 30, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235-2771).

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Virginia.

SUPPLEMENTARY INFORMATION: *Panicum carteri* is an annual grass whose population fluctuates considerably in numbers from year to year, apparently in response to the amount of winter rainfall. The largest number of individuals of this species ever observed was slightly over two hundred, while in some years observers have failed to find the species at all. The principal threats to the species' survival are trampling by visitors to Mokoli'i island; vandalism, including arson; and the recent planting of coconut trees in the area in which it grows.

Background

Section 12 of the Endangered Species Act of 1973 (the Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the U.S. Fish and Wildlife Service published notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition under Section 4(c)(2) of the Act. The plant species named in this petition were placed under review for addition to the list of Endangered and

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Proposal To List *Panicum carteri* (Carter's Panicgrass) as an Endangered Species and Determine its Critical Habitat

AGENCY: Fish and Wildlife Service.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine that one plant, *Panicum carteri* Hosaka (Carter's panicgrass) is an Endangered Species and that Mokoli'i island, Hawaii is its

Threatened plants and on June 16, 1976, the Director published a proposed rule (41 FR 24523-24572) which would have listed some 1,700 such taxa as Endangered. This proposal was based on the Smithsonian petition as well as comments and other information received by the Service and the Smithsonian Institution. *Panicum carteri* was listed in House Document No. 94-51 and the 1975 notice as extinct, but was later rediscovered and included in the proposal.

The Endangered Species Act Amendments of 1978 subsequently required that any proposal to list a species be withdrawn unless made final within two years. A period of one year was allowed after the passage of the amendments on November 10, 1978, during which no proposals were to be withdrawn because of having passed a two year deadline. On December 10, 1979, the Service published a notice withdrawing that portion of the proposal of June 16, 1976, that had not been the subject of final action, as well as four other expired proposals. The present proposal is based on information available at the time of the 1976 proposal and information gathered between that time and the date of the proposal's withdrawal as well as a report of a visit to Mokoli'i indicating that the site from which *Panicum carteri* has been known was recently disturbed by the planting of coconut trees (Annabelle Takahashi, letter dated Oct. 8, 1980).

In the June 2, 1977, **Federal Register** (42 FR 32373-32381) the Service published a final rule detailing regulations to protect Endangered and Threatened plant species. These established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain conditions.

Summary of Factors Affecting the Species

Section 4(a) of the Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (45 FR 13010-13026, to be codified at 50 CFR part 424) set out the procedures to be followed by the Director in determining whether any species is Endangered or Threatened as defined by the Act. Five general classes of factors are to be considered in making any such determination. These factors as they apply to the status of *Panicum carteri* are:

(1) *Present or threatened destruction, modification, or curtailment of habitat or range.* *Panicum carteri* occurs only on Mokoli'i, or Chinaman's Hat, island in Honolulu county, Hawaii. This is a part of Kualoa Regional Park. Although the

master development plan for the park designates the islands as a wildlife sanctuary, it will be difficult to control access to the island. The island can be reached by wading during low tide and by small boats at other times. As the development plans are implemented and more people are attracted to the park, it is inevitable that traffic will become heavier on Mokoli'i. The entire population of the species ranges along a foot trail. Although the effect of pedestrian traffic on the species is not known, some deterioration of the environment with a concomitant effect on the species can be anticipated. A report received by the Service (Annabelle Takahashi, letter dated Oct. 8, 1980) indicates that recent planting of coconut trees on Mokoli'i may have had a severe impact on the area from which *Panicum carteri* is known.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes*—Does not apply to this species.

(3) *Disease or Predation*—None known.

(4) *Inadequacy of existing regulatory mechanisms*—Although Mokoli'i is a designated wildlife sanctuary, it is difficult to restrict access to the island.

(5) *Other natural or manmade factors affecting continued existence*—The small number of individuals and their limited distribution must be considered a threat to the species' continued existence. A single fire or act of vandalism could severely deplete the one known population.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The proposed Critical Habitat of *Panicum carteri* includes the entire island of Mokoli'i (approximately 4 acres), although the plant only occurs in two restricted portions of the Island. Because of the small size of Mokoli'i, activities anywhere on the island could be significant to the conservation of this species. As an example, a fire set

virtually anywhere on the island during drought conditions might spread to the area in which the *Panicum* grows. Therefore, the Service believes the entire island to be an area essential to the conservation of the species.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities, through Section 7 of the Act.

Actions that would result in direct adverse effects on the proposed Critical Habitat includes setting of fires on the island and trampling of the portion of the island that actually supports the population of *Panicum carteri*. Any action that contributed to increased human visitation of Mokoli'i could be expected to contribute indirectly to such adverse modification.

Because of the lack of Federal involvement in the area proposed as Critical Habitat, no direct consequences are foreseen as a result of such designation. Federal recognition that the island is essential to the conservation of *Panicum carteri*, however, may tend to reinforce the City and County of Honolulu's compatible designation of the area as a wildlife sanctuary.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis for the present proposal to serve as a basis for considering the possible exclusion of certain portions of the area from Critical Habitat because of impacts such designation might have. On this basis, the Service believes the present proposal to be without significant economic or other impacts in the foreseeable future. A final analysis will be prepared prior to the time of promulgating a final rule determining the Critical Habitat of *Panicum carteri*. This final analysis will take into account any additional information obtained in response to this proposal, and will serve in part as the basis of a decision regarding the final boundary of the Critical Habitat.

Effects of This Proposal if Adopted as a Final Rule

In addition to the effects discussed above, the effects of this proposal if adopted as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977 **Federal Register** set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71 of 50 CFR and are summarized below.

With respect to *Panicum carteri* all prohibitions of Section 9(a)(2) of the Act, as implemented by Section 17.61 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell this species or offer it for sale in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and § 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Section 7 of the Act also requires that Federal agencies carry out programs for the conservation of Endangered and Threatened species and that they ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or destroy or adversely modify the Critical Habitat of such species. A procedure is also established whereby particular Federal actions may be exempted from compliance with Section 7(a). Provisions for interagency cooperation in complying with Section 7(a) of the Act are codified at 50 CFR Part 402. The present proposal would make the protective provisions of Section 7(a)(3) of the Act available in furtherance of the conservation of *Panicum carteri* and protection of its proposed Critical Habitat.

The Service will also review the status of this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for

placement upon the appropriate appendices to that Convention or whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file at the Service's Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made prior to the promulgation of a final rule as to whether it is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act.

Note.—The Service has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Public Comments Solicited

The Director intends that the rules finally adopted be as accurate and effective as possible in the conservation of *Panicum carteri*. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;
- (2) The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;
- (3) Additional information concerning the range and distribution of this species;
- (4) Current or planned activities in the area proposed as Critical Habitat;
- (5) The probable impacts on such activities if the area is designated as Critical Habitat; and
- (6) The foreseeable economic and other impacts of the Critical Habitat designation.

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Poaceae—Grass family: <i>Panicum carteri</i>	Carter's panicgrass..	Hawaii.....	E	NA	Yes.....	NA

2. It is further proposed to amend § 17.96(a) by adding a description of the Critical Habitat of *Panicum carteri* alphabetically by family, genus, and species as follows:

Final promulgation of a rule on *Panicum carteri* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

Public Meeting

The Service hereby announces that a public meeting will be held at Kahalu'u Elementary School Cafeteria, 47-280 Waihe'e road, Kaneohe, Hawaii, on Thursday, March 5, 1981, at 7:30 p.m. concerning this proposed rule. The public is invited to attend this meeting and to present opinions and information regarding the proposal.

This proposal is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, 87 Stat. 884)

The primary authors of this proposed rule are Dr. Derral Herbst, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Honolulu, HI 96850 (808/546-5615) and Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

Information Sources

Hosaka, E.Y. 1942. A new Hawaiian *Panicum* (Gramineae). Occ. Paps., B.P. Bishop Museum 17:67-69.
 Park Engineering, Inc. 1972. Master Development Plan—Kualoa Regional Park, for the City and County of Honolulu, Department of Parks and Recreation.
 U.S. Army Engineer District, Honolulu, 1977. Detailed Project Report and Final Environmental Statement for Beach Erosion Control, Kualoa Regional Park, Oahu, Hawaii.

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below.

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of Endangered and Threatened plants:

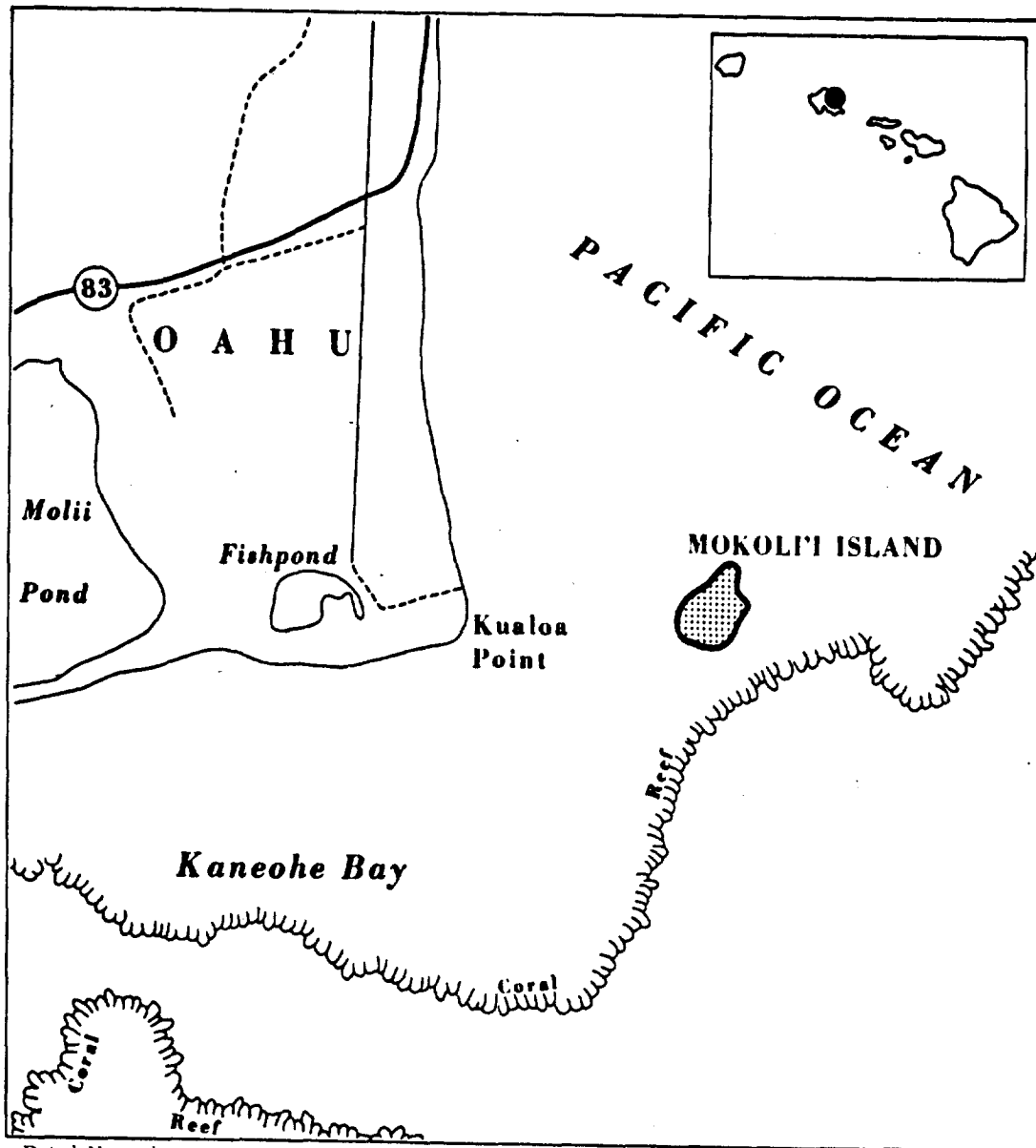
Poaceae

Panicum carteri
 Carter's panicgrass

Hawaii, City and County of Honolulu, entire island of Mokoli'i (see map).

CARTER'S PANICGRASS

Honolulu County, HAWAII



Dated: November 26, 1980.

Robert S. Cook,
Acting Director, Fish and Wildlife Service.

(Proposal: *Panicum carteri* as Endangered,
with Critical Habitat)

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